

TESTIMONY TO THE JUCIARY COMMITTEE
FROM HARC INC.,
ON BILL NUMBER 247
AN ACT CONCERNING THE SEXUAL ASSAULT OF PERSONS WHOSE ABILITY TO
COMMUNICATE LACK OF CONSENT IS SUBSTANTIALLY IMPAIRED

I am Andrea Barton Reeves, Vice President of Administration at HARC. For the past 61 years, we have helped people with intellectual disability live with inclusion and dignity. Today, I ask the Committee to reconsider some of the proposed language of Raised Bill Number 247, An Act Concerning The Sexual Assault Of Persons Whose Ability To Communicate Lack of Consent Is Substantially Impaired. The language, as currently proposed, may in fact criminalize consensual sexual contact between two people with intellectual and related disabilities.

First, let me commend the Judiciary Committee on its efforts avoid another outcome like that of State v. Fourtin. No thinking, caring citizen would be comforted by the final disposition in that matter. In an effort to correct the wrong in that case, I urge the Committee to carefully consider how the proposed language may adversely affect the very people it was designed to protect. As Section 1 (a) (3) is currently proposed, a person would be guilty of sexual assault in the second degree when such persons engage in sexual intercourse and (3) such other person is physically helpless and the ability of the other person to communicate lack of consent to sexual intercourse is substantially impaired because of a mental or physical condition and the actor knows or has reasonable cause to believe that the ability of such other person to communicate the lack of consent is impaired.

While the proposed language properly criminalizes predatory behavior like that in Fourtin, when two people with intellectual disability choose to engage in sexual intercourse, both actors may be both substantially impaired but still have the ability to consent to sexual activity. Often, there is a misconception that people with intellectual disability do not engage in sexual activity and that the activity cannot be consensual because of the person's disability. Those of us who support people with intellectual disability know that almost everyone with a disability experiences the same range of human emotion and need as everyone else. When couples with any developmental disabilities, date, have sex or enter into long-term relationships, they should be able to do so without fear of prosecution.

Sometimes, because people with intellectual disability have not had their sexuality acknowledged as a natural part of their humanity, they often feel guilty about having sexual feelings and acting on those feeling. In those instances, people may engage in consensual sexual activity, only to find that their parents, friends and other families, may react negatively to finding out about their sexual encounters. In those cases, either or both actors may claim that they did not consent to the act and that the other actor forced them to engage in sexual activity. This is not to say that unwanted sexual advances could not be made by people with intellectual disability. But the way the law is currently proposed, law enforcement would have no choice but to find the actor accused of forcing him or herself upon the other person guilty of sexual assault in the second degree and the fourth degree. This outcome is unfortunate at best, and at its worst, sets back significantly the progress made to have all people with intellectual disability live with

dignity and inclusion, which also means the right to explore their sexuality without have that exploration become criminal behavior.

HARC is working with the Office of Protection and Advocacy and the State's Attorney's Office to ascertain their perspective on this issue: We all want to protect the rights of people like the victim in Fourtin and avoid another physically helpless person from becoming the victim of a predator. At the same time, the rights of all people with intellectual and physical disability to explore all aspects of their humanity, including their sexuality, should be protected as well. Therefore, we urge the Judiciary Committee to consider language that would permit the State's Attorney to consider the "mental defect" (to use the words in the statute), of all parties allegedly engaged in the criminal act before a decision in made to charge and prosecute people with intellectual disability for engaging in consensual sexual conduct.

I thank the Committee for their time and consideration.

Respectfully Submitted,

Andrea Barton Reeves